Bryan W. Shaw, Ph.D., P.E., *Chairman*Toby Baker, *Commissioner*Jon Niermann, *Commissioner*Richard A. Hyde, P.E., *Executive Director* 



### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 30, 2017

The Honorable Dan Patrick Lieutenant Governor of Texas Capitol Station PO Box 12068 Austin, Texas 78711

Re: Responsibility of the Texas Commission on Environmental Quality (TCEQ) Pursuant to Article XVI, Section 59(d), Texas Constitution

Senate Bill (SB) 307, as Filed by Senator Robert Nichols and Senator Van Taylor - Relating to the functions and territory of the Upper Colorado River Authority, following the recommendations of the Sunset Advisory Commission.

### Dear Governor Patrick:

The following comments are provided pursuant to the Constitutional requirements referenced above. Under those requirements, the TCEQ must submit, to the Governor, Lieutenant Governor and Speaker of the House of Representatives, the TCEQ's recommendations on specific legislation affecting water districts. We recommend that these comments be considered in the evaluation of the proposed legislation.

Senate Bill 307 amends Section 8506 of the Special District Local Laws code to incorporate recommendations of the Sunset Advisory Commission for the Upper Colorado River Authority (UCRA). If enacted, this bill is to take effect on September 1, 2017; Section 1 of this bill proposes changes to the operational territory of UCRA by amending Section 8506.003 to include Concho, Crocket, Glasscock, Irion, Menard, Mitchell, Nolan, Reagan, Runnels, Schleicher, Sterling, and Taylor Counties. Not all of the added counties are located entirely within the Colorado River Basin, potentially due to watersheds that overlap county boundaries. Portions of Mitchell, Nolan, and Taylor counties are located within the Brazos river basin; while portions of Crockett, Regan and Schleicher counties are located within the Rio Grande river basin; Section 2 of the bill proposes to add Section 8506.0021 which states that the UCRA is subject to review but may not be abolished under the Texas Sunset Act. The bill reiterates language from the Texas Sunset Act that "authority shall pay the cost incurred" with a sunset review and that the costs are determined by the Sunset Advisory Commission. This new section also adds that a Sunset Review of UCRA will be conducted as though it is a state agency scheduled to be abolished on 09/01/2029, and the Sunset Review will recur every 12 years thereafter; Section 3 of the bill proposes to amend Section 8506.051 by removing language from Section 8506.051 (c) and adds Section 8506.051 (d). Section 8506.051 (c) is amended to remove the requirement to appoint nine directors from specific geographic areas: three directors who reside in Tom Green County, three directors who reside in Coke County, and three directors who reside in counties contiguous to the authority of a county any part of which is within 25 miles of the authority.

Hon. Dan Patrick Page 2 March 30, 2017

Section 8506.051 (c) is amended to add a requirement that each director on the board should be a resident in the authority's territory and creates a requirement for the governor to make an attempt to appoint directors that represent the territory geographically. Section 8506.051 (d) was added to require the governor to designate a board member as presiding officer; Section 4 of the bill amends 8506.056 (a) to omit the requirement of the board to select a presiding officer. As proposed in Section 3 of the bill, the requirement to designate a presiding officer of the board is now assigned to the governor; Section 5 of the bill adds several new sections to establish administrative changes to UCRA: Newly created Section 8506.060 (a) – (d) directs the board to create a Director Training Program: Section 8506.060 (a) requires completion of training for any director before he/she is permitted to vote, deliberate, or be counted as a director in attendance at board meetings; Section 8506.060 (b) adds requirements regarding what information will be included in the director training. This information includes the laws governing authority operations, authority programs, functions, rules, and budget, the scope and limitations on rulemaking, results of authority audits, requirements for open meetings, public information, administrative procedure, and disclosure of conflicts of interest, laws regarding directors and their duties, and authority ethics policies; Section 8506.060 (c) proposes that a board appointee is entitled to reimbursement for travel expenses incurred for training; eligibility of reimbursement is allowed for training which occurs before or after the person qualifies for office; Section 8506.060 (d) proposes the creation of a training manual and requirements for the distribution of the training manual. Newly created Section 8506.061 directs the board to develop and implement procedures which separate responsibilities of the board from that of the general manager and staff of the authority; newly created Section 8506.062 (a-c) directs the board to develop a policy to encourage the use of procedures in Chapter 2008 and 2009 of the Government Code to adopt authority rules and to resolve disputes in the authority's jurisdiction, and directs the board to coordinate the implementation of this policy and provide training for how it will be implemented. It also directs the board to conform to alternative dispute resolution guidelines issued by the State Office of Administrative Hearings to resolve disputes as well as collect data on the effectiveness of these procedures; newly created Section 8506.063 directs the board to establish a policy which allows the public an opportunity to participate in board meetings, including speaking on agenda items; Section 6 of the bill adds Section 8506.116 (a) - (c) directing the authority to maintain a system to document details of complaints, act on complaints promptly, make available information about how complaints are investigated and resolved, as well as directing the authority to provide complaint parties with regular updates regarding the status of the complaint until it is resolved; Section 7 repeals Section 1A, Chapter 126, General Laws, Acts of the 44th Legislature, Regular Session, 1935; which created the UCRA and established boundaries; Section 8 establishes December 1, 2017 as the limit for a person serving on the board of directors for UCRA to vote, deliberate and be counted as a director in attendance of board meetings; Section 9 of the bill includes notice of intent to introduce the bill in accordance with requirements in Section 59, Article XVI, Texas Constitution; and Chapter 313 of the Government Code. This section also identifies recipients of the information, including the governor and TCEQ; Section 10 of the bill establishes an effective date of September 1, 2017; House Bill 1921 by Rep. Flynn, as introduced in the 85th legislative session, is the companion to this proposed bill; and, history of the bill: Sunset review of the UCRA was conducted in

Hon. Dan Patrick Page 3 March 30, 2017

accordance with S.B. 523 of the 84th Legislative Session, which required sunset review of 18 river authorities and scheduled review of 4-5 authorities for each biennium.

Sincerely,

Cari-Michel LaCaille, Director

Water Supply Division

Honorable Charles Perry, Chairman, Senate Agriculture, Water & Rural Affairs cc:

Senator Robert Nichols, Texas Senate Senator Van Taylor, Texas Senate

### LETTER OF TRANSMITTAL TEXAS SENATE STATE OF TEXAS

# STATE OF TEXAS SB 307

Bill Number

TO: The Honorable Governor of Texas

SUBJECT: A Bill Relating to a Conservation and Reclamation District

This is to transmit to you and the Texas Commission on Environmental Quality copies of a bill relating to a conservation and reclamation district and copies of the notice of intention to introduce the bill. One copy is for your files and one for you to forward to the Texas Commission on Environmental Quality, under Section 59(d), Article XVI, Constitution of the State of Texas.

3/2/2017	Fatsy Saw
Date transmitted to	Secretary of the Senate
Governor's Office	

TO: Texas Commission on Environmental Quality

SUBJECT: A Bill Relating to a Conservation and Reclamation District

This is to forward to you a copy of a bill relating to conservation and reclamation district and a copy of the notice of intention to introduce the bill.

March 3, 2017

Date transmitted to

Governor

Texas Commission on Environmental Quality

TO:

The Honorable President of the Senate
The Honorable Speaker of the House of Representatives

The Honorable Governor of Texas

SUBJECT: A Bill Relating to a Conservation and Reclamation District

Attached are recommendations of the Texas Commission on Environmental Quality in compliance with Section 59(d), Article XVI, Constitution of the State of Texas.

Texas Commission on Environmental Quality

By: Nichols, Taylor of Collin

### S.B. No. 307

## A BILL TO BE ENTITLED

- 1 AN ACT
- 2 relating to the functions and territory of the Upper Colorado River
- 3 Authority, following the recommendations of the Sunset Advisory
- 4 Commission.
- 5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
- SECTION 1. Section 8506.003, Special District Local Laws
- 7 Code, is amended to read as follows:
- Sec. 8506.003. TERRITORY. Unless 8 modified under
- 9 Subchapter J, Chapter 49, Water Code, or other law, the authority's
- 10 territory consists of that part of this state included in the
- 11 boundaries of Coke, Concho, Crockett, Glasscock, Irion, Menard,
- 12 Mitchell, Nolan, Reagan, Runnels, Schleicher, Sterling, Taylor,
- 13 and Tom Green Counties.
- SECTION 2. Subchapter A, Chapter 8506, Special District
- 15 Local Laws Code, is amended by adding Section 8506.0021 to read as
- 16 follows:

23

- Sec. 8506.0021. APPLICATION OF SUNSET ACT. 17 (a)
- authority is subject to review under Chapter 325, Government Code
- 19 (Texas Sunset Act), but may not be abolished under that chapter.
- 20 The review shall be conducted under Section 325.025, Government
- 21 Code, as if the authority were a state agency scheduled to be
- 22 abolished September 1, 2029, and every 12th year after that year. (b) The authority shall pay the cost incurred by the Sunset
- 24 Advisory Commission in performing the review. The Sunset Advisory

- 1 Commission shall determine the cost, and the authority shall pay
- 2 the amount promptly on receipt of a statement from the Sunset
- 3 Advisory Commission detailing the cost.
- 4 SECTION 3. Section 8506.051, Special District Local Laws
- 5 Code, is amended by amending Subsection (c) and adding Subsection
- 6 (d) to read as follows:
- 7 (c) Each director must be a resident of a county located in
- 8 the authority's territory. The governor shall attempt to achieve
- 9 geographic representation throughout [Three directors must be
- 10 residents of Tom Green County, three directors must be residents of
- 11 Coke County, and three directors must be residents of counties
- 12 contiguous to the authority or a county any part of which is within
- 13 25 miles of the authority in the appointment of directors.
- 14 (d) The governor shall designate a member of the board as
- 15 the presiding officer of the board to serve in that capacity at the
- 16 pleasure of the governor.
- SECTION 4. Section 8506.056(a), Special District Local Laws
- 18 Code, is amended to read as follows:
- 20  $\frac{\text{officer}_{r}}{\text{office}}$  and a treasurer. The treasurer may also hold the office
- 21 of secretary.
- 22 SECTION 5. Subchapter B, Chapter 8506, Special District
- 23 Local Laws Code, is amended by adding Sections 8506.060, 8506.061,
- 24 8506.062, and 8506.063 to read as follows:
- Sec. 8506.060. DIRECTOR TRAINING PROGRAM. (a) A person who
- 26 is appointed to and qualifies for office as a director may not vote,
- 27 deliberate, or be counted as a director in attendance at a meeting

- 1 of the board until the person completes a training program that
- 2 <u>complies with this section.</u>
- 3 (b) The training program must provide the person with
- 4 <u>information regarding:</u>
- 5 (1) the law governing authority operations;
- 6 (2) the programs, functions, rules, and budget of the
- 7 <u>authority;</u>
- 8 (3) the scope of and limitations on the rulemaking
- 9 <u>authority of the authority;</u>
- 10 (4) the results of the most recent formal audit of the
- 11 <u>authority;</u>
- 12 <u>(5)</u> the requirements of:
- (A) laws relating to open meetings, public
- 14 information, administrative procedure, and disclosing conflicts of
- 15 <u>interest; and</u>
- 16 (B) other laws applicable to directors of a river
- 17 authority in performing their duties; and
- 18 (6) any applicable ethics policies adopted by the
- 19 authority or the Texas Ethics Commission.
- 20 (c) A person appointed to the board is entitled to
- 21 reimbursement by the authority for travel expenses incurred in
- 22 attending the training program regardless of whether attendance at
- 23 the program occurs before or after the person qualifies for office.
- 24 (d) The board shall create a training manual that includes
- 25 the information required by Subsection (b). The board shall
- 26 distribute a copy of the training manual annually to each director.
- 27 On receipt of the training manual, each director shall sign and

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S.B. No. 307
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- 1 submit to the board a statement acknowledging receipt of the
- 2 training manual.
- 3 Sec. 8506.061. SEPARATION OF POLICYMAKING AND MANAGEMENT
- 4 FUNCTIONS. The board shall develop and implement policies that
- 5 clearly separate the policymaking responsibilities of the board and
- 6 the management responsibilities of the general manager and staff of
- 7 the authority.
- 8 Sec. 8506.062. NEGOTIATED RULEMAKING AND ALTERNATIVE
- 9 DISPUTE RESOLUTION. (a) The board shall develop a policy to
- 10 encourage the use of:
- 11 (1) negotiated rulemaking procedures under Chapter
- 12 2008, Government Code, for the adoption of authority rules; and
- 13 (2) appropriate alternative dispute resolution
- 14 procedures under Chapter 2009, Government Code, to assist in the
- 15 resolution of internal and external disputes under the authority's
- 16 jurisdiction.
- 17 (b) The authority's procedures relating to alternative
- 18 dispute resolution must conform, to the extent possible, to any
- 19 model guidelines issued by the State Office of Administrative
- 20 Hearings for the use of alternative dispute resolution by state
- 21 agencies.
- (c) The authority shall:
- 23 (1) coordinate the implementation of the policy
- 24 adopted under Subsection (a);
- (2) provide training as needed to implement the
- 26 procedures for negotiated rulemaking or alternative dispute
- 27 resolution; and

- 1 (3) collect data concerning the effectiveness of those
- 2 procedures.
- 3 Sec. 8506.063. PUBLIC COMMENT POLICY. The board shall
- 4 develop and implement policies that provide the public with a
- 5 reasonable opportunity to appear before the board and to speak on
- 6 any agenda item at board meetings.
- 7 SECTION 6. Subchapter C, Chapter 8506, Special District
- 8 Local Laws Code, is amended by adding Section 8506.116 to read as
- 9 follows:
- Sec. 8506.116. COMPLAINTS. (a) The authority shall
- 11 maintain a system to promptly and efficiently act on complaints
- 12 filed with the authority. The authority shall maintain information
- 13 about parties to the complaint, the subject matter of the
- 14 complaint, a summary of the results of the review or investigation
- of the complaint, and its disposition.
- 16 (b) The authority shall make information available
- 17 describing its procedures for complaint investigation and
- 18 <u>resolution.</u>
- 19 (c) The authority shall periodically notify the complaint
- 20 parties of the status of the complaint until final disposition.
- 21 SECTION 7. Section 1A, Chapter 126, General Laws, Acts of
- 22 the 44th Legislature, Regular Session, 1935, is repealed.
- SECTION 8. (a) Notwithstanding Section 8506.060(a),
- 24 Special District Local Laws Code, as added by this Act, a person
- 25 serving on the board of directors of the Upper Colorado River
- 26 Authority may vote, deliberate, and be counted as a director in
- 27 attendance at a meeting of the board until December 1, 2017.

- 1 (b) This section expires January 1, 2018.
- 2 SECTION 9. (a) The legal notice of the intention to
- 3 introduce this Act, setting forth the general substance of this
- 4 Act, has been published as provided by law, and the notice and a
- 5 copy of this Act have been furnished to all persons, agencies,
- 6 officials, or entities to which they are required to be furnished
- 7  $\,$  under Section 59, Article XVI, Texas Constitution, and Chapter 313,
- 8 Government Code.
- 9 (b) The governor, one of the required recipients, has
- 10 submitted the notice and Act to the Texas Commission on
- 11 Environmental Quality.
- 12 (c) The Texas Commission on Environmental Quality has filed
- 13 its recommendations relating to this Act with the governor, the
- 14 lieutenant governor, and the speaker of the house of
- 15 representatives within the required time.
- 16 (d) All requirements of the constitution and laws of this
- 17 state and the rules and procedures of the legislature with respect
- 18 to the notice, introduction, and passage of this Act are fulfilled
- 19 and accomplished.
- 20 SECTION 10. This Act takes effect September 1, 2017.

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Texas Sunset Advisory Commission P.O. Box 13066

Account Number:

10042570

Austin, TX 78711

Order Number:

0000322933

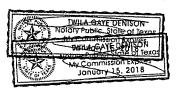
Before Me, the undersigned authority, on this day personally appeared

Penny Valdez of the Midland Reporter-Telegram, a newspaper of general circulation published in Midland, Ector, Howard, Crane, Glasscock, Martin, Upton, and Andrews Counties, Texas, who stated on oath that the attached instrument was published in said newspaper on each of the following dates to wit:

12-18-2016

Penny Valdez

Sworn and Subscribed to before me, this Monday, December 19, 2016



Notary Public







🔍 432,682.6222 🛮 🖾 mrtclassifieds@mrt.com

# **Attention Readers** In observance of the Christian of the Ch

Hardley, December 231h, 2016

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DATE 01/18/2017

Before me, the undersigned authority, on this day personally appeared Lee-Ann Hammit representing the Abilene Reporter-News being by me duly sworn deposes and says that the following notice(s) published in said newspaper by:

TEXAS SUNSET ADVISORY COMMITTEE

On the following

THURSDAY, DECEMBER 15, 2016

Lee-Ann Hammit LEGAL NOTICE CLERK

my hand and seal of office.

Hyodatha NOTARY PUBLIC

My Commission Expires: 03 18/20

RHONDA HICKS lotary Public, State of Texas NOTARY ID # 13058967-4 My Commission Exp 03-16-20

Abilene Reporter-News

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This is to give notice of intent to litroduce in the 85th Legislature, Regular Session, a bill relating to the Sunset Commission's recommendations for the Upper Colorado River Authority. LEGAL NOTICE



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sold \$50.130. Stocker helifers also
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choice heavyweight calves
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DEC 1 9 2016

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### PROOF OF PUBLICATION

STATE OF TEXAS, COUNTY OF TOM GREEN

On December 15, 2016, personally appeared before me the undersigned, a Notary Public in and for said county and state, Keri R. Patton - Financial Controller of the SAN ANGELO STANDARD-TIMES, a daily newspaper published in San Angelo, County of TOM GREEN, State of Texas and of general circulation in the following counties: Tom Green, Coke, Concho, Crockett, Irion, Kimble, Mason, McCulloch, Menard, Reagan, Runnels, Schleicher, **Sterling, Sutton**. The attached advertisement, a true copy of which is hereto annexed, was published in said newspaper in its issues thereof the following dates: December 15, 2016. Subscribed and sworn to before me on December 15, 2016.

Kei R Patton

Financial Controller, San Angelo Standard-Times

Dana Sue Gray

Ad # 1404632